

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

Joseph Zwicharowski,

Debtor.

Chapter 13

Bankruptcy No. 17-11811-MDC

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**MOTION FOR RELIEF FROM AUTOMATIC STAY PURSUANT TO 11
U.S.C. §362 (d)(1)**

TD Bank, N.A. as Successor in interest to Commerce Bank, N.A., as and for a Motion for Relief from Automatic Stay pursuant to 11 U.S.C. §362(d)(1), states the following as grounds therefor:

1. On March 15, 2017, the debtor, above-named, filed a Voluntary Petition in Bankruptcy under Title 11, Chapter 13, U.S.C., in the United States Bankruptcy Court for the Eastern District of Pennsylvania.
2. The Court has jurisdiction to entertain this motion under 28 U.S.C. §157.
3. TD Bank, N.A. as Successor in interest to Commerce Bank, N.A. (hereinafter “Movant”), is a secured creditor herein and the holder of a duly perfected mortgage interest in certain real property located at 3314 Keswick Terrace, Philadelphia, PA 19114 owned by, and upon information and belief, in the possession and control of the debtor, above-named.
4. Pursuant to 11 U.S.C. §362, upon the commencement of the instant bankruptcy case, MOVANT is stayed from taking any action against the debtor to foreclose upon the real property.
5. On November 4, 2003, the debtor borrowed \$14,000.00 from Commerce Bank, N.A. The indebtedness was evidenced by a note, which was secured by a mortgage signed by the debtor. Copies of the note and mortgage are annexed hereto and made a part hereof as Exhibit “A”. On July 19, 2016, Debtor entered into a loan modification agreement. A copy of said Loan Modification Agreement is annexed hereto and made a part hereof as Exhibit “B”.

6. According to information provided by MOVANT, as of August 13, 2020 the debtor was due for monthly post-petition mortgage payments from April 1, 2017 through August 1, 2020. The post petition arrears total \$5,657.59.

7. As of August 13, 2020, the net balance remaining due and owing to MOVANT was \$17,601.08.

8. U.S.C. §362(d) provides for circumstances under which the Court may terminate, annul, modify, or condition the automatic stay. Specifically, 11 U.S.C. §362(d)(1) and (2), provide:

"(d) On request of a party in interest and after a notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay –

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

(A) the debtors do not have an equity in such property; and

(B) such property is not necessary to an effective reorganization

9. Debtor's failure to make payments is a default under the note and mortgage constituting cause for termination of the stay to allow the creditor to protect its interests in the property, which is depreciating.

10. It is respectfully asserted that MOVANT's interest in the property will not be adequately protected if the automatic stay is allowed to remain in effect.

11. Sufficient cause exists to grant MOVANT, relief from the automatic stay which includes the following:

a. The debtor is in default under the terms and conditions of the note and mortgage.

b. The security interest of MOVANT with respect to the property is not adequately protected as envisioned under 11 U.S.C. §36.

12. In the event relief from stay is granted, then MOVANT shall provide surplus monies to the trustee or debtor in possession.

WHEREFORE, MOVANT Bank, N.A. as Successor in interest to Commerce Bank, N.A., respectfully requests that pursuant to 11 U.S.C. §362 the Court issue an Order granting Movant relief from automatic stay in order to foreclose its lien on the property and for such other and further relief as to the Court may seem just and proper.

DATED: September 2, 2020

TD Bank, N.A. as Successor in interest to Commerce Bank,
N.A.
By Its Counsel

/s/ Martin A. Mooney, Esq.
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